

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, x Docket No. 04-MJ-1170 (KAM)

Plaintiff, . August 28, 2004

v. . Brooklyn, NY

SHAHAWAR MATIN SIRAJ,
JAMES ELSHAFAY,

Defendant. .

TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff:

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Brooklyn, NY 11201

HEIDI CESARE, ESQ.

The Legal Aid Society
Federal Defender Division
16 Court Street, 3rd Floor
Brooklyn, NY 11201-4859

For the Defendant Siraj:

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The Legal Aid Society
Federal Defender Division
16 Court Street, 3rd Floor
Brooklyn, NY 11201-4859

1 (APPEARANCES CONT'D.

2 For the Defendant Elshafay:

THOMAS F.X. DUNN, ESQ.
401 Broadway
Suite 1502
New York, NY 10013

3 Also Present:

4 Det. Joseph Nugent
5 NYPD

6 Transcriber:

7 Joseph C. Williams
8 845 Riverside Driver, #63
9 New York, NY 10032
10 1-917-435-3737

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1 THE CLERK: United States of America against Shahawar Mar-
2 tin Siraj and James Elshafay.

3 Counsel, please state your names for the record.

4 MR. CURRIE: For the United States Kelly Currie.

5 | Good afternoon, your Honor.

6 THE COURT: Good Afternoon.

7 NR. NUGENT: Detective Joseph Nugent, NYPD.

8 MS. CESARE: Good afternoon. Heidi Cesare for the
9 Federal Defendant Office for Mr. Martin.

10 THE COURT: Good afternoon.

11 MR. DUNN: Thomas Dunn for James Elshafay.

12 THE COURT: Good afternoon

13 And good afternoon, Mr. Siraj and Mr. Elshafay.

14 MR. SIRAJ: Good afternoon.

15 THE COURT: Mr. Siraj and Mr. Elshafay, do both of
16 you speak and understand English?

17 MR. SIRAJ: Yes.

18 MR. ELSHAFAY: Yes.

19 THE COURT: Will you be able to proceed here today
20 then in English without the need of an interpreter?

21 MR. SIRAJ: Yes.

22 THE COURT: And you , sir?

23 MR. ELSHAFAY: Yes.

24 THE COURT: All right.

25 I'd like the Detective Nugent,

1 please, to raise your right hand.

2 Sir, do you swear that the states contained in the
3 complaint herein against Mr. Siraj and Mr. Elshafay are true?

4 MR. NUGENT: Yes, I do.

5 (DET. JOSEPH NUGENT, SWORN)

6 THE COURT: All right, the court accepts the com-
7 plaint.

8 Gentlemen, you are here for the purpose of making
9 sure that you understand the crimes with which you are charged
10 and also to understand that you have the right to an attorney.
11 And we will also address the question of bail, whether you will
12 held in jail or released on bail today.

13 You have both been charged under a complaint with
14 knowingly and intentionally conspiring to maliciously damage
15 and destroy by means of an explosive a building, vehicle and
16 other real property, that is, the 34th Street subway station at
17 Herald Square in New York, New York.

18 This is not a trial and you will not be called upon
19 to make any statements at this time. You are not required to
20 make any statements or further statements and, indeed, if do
21 make any statements except to your counsel those statements
22 could be used against you.

23 Do you understand?

24 MR. SIRAJ: Yes.

25 THE COURT: Sir, I'd like, do you

1 understand? All right.

2 You have the right to counsel and to consult with
3 counsel with respect to these proceedings and the charges that
4 are going, that have been brought against you.

5 Mr. Siraj, you have been appointed with Ms. Cesare as
6 your counsel and Mr. Elshafay with Mr. Thomas Dunn.

7 MR. SIRAJ: Yes.

8 THE COURT: Both of you have the right to consult
9 with your counsel and if at any time you don't understand what
10 is being said or if you have any question about the proceed-
11 ings, please inform the court and we'll make sure that you have
12 an opportunity to speak with your attorneys.

13 Do you understand that?

14 MR. SIRAJ: Yes.

15 THE COURT: All right, counsel, have you had the op-
16 portunity to review the complaint with your clients and to ad-
17 vise them of the charges brought against them?

18 Ms. Cesare?

19 MS. CESARE: Yes, I have.

20 THE COURT: All right. And you, Mr. Dunn?

21 MR. DUNN: Yes, your Honor.

22 THE COURT: And are you confident that your clients
23 understand their rights and the charges that have been brought
24 against them?

25 MS. CESARE: Yes.

1 MR. DUNN: Yes.

2 THE COURT: All right. What is the Defendants' posi-
3 tion with respect to a preliminary hearing?

4 MS. CESARE: On behalf of Mr. Martin, we will re-
5 serve our right to seek a bail hearing for a future date and
6 will consent to a permanent order of detention at this time.

7 THE COURT: All right. And what about with respect
8 to a preliminary hearing?

9 MS. CESARE: Oh, so waived.

10 THE COURT: All right.

11 And you, Mr. Dunn?

12 MR. DUNN: I'm gonna waive the preliminary hearing,
13 your Honor, and we consent to an order of detention with leave
14 to come back when we have a bail package to present to the
15 court.

16 THE COURT: All right. And what is the Govern-
17 ment's position with respect to a bail package?

18 MR. CURRIE: Your Honor, based on the nature and se-
19 riousness of the case and the strength of the case, the Govern-
20 ment would be imposed to any bail package.

21 THE COURT: All right, Mr. Siraj, are you a United
22 States citizen, sir?

23 MR. SIRAJ: No.

24 THE COURT: All right. I understand that is, is
25 there is, is there an ice (ph) detainer on Mr. Siraj?

1 MR. CURRIE: There is, your Honor.

2 THE COURT: At this time? All right, the court
3 finds that given Mr. Siraj's status that an order of detention
4 pending trial will be entered.

5 And with respect to Mr. Elshafay we will also enter
6 an order of detention with need to appear at a later time and
7 have the court consider whether or not the package is suffi-
8 cient to warrant Mr. Elshafay's release at that time.

9 MR. DUNN: Thank you, your Honor.

10 THE COURT: Do either of the defendants have any
11 medical conditions or prescription medication that should be,
12 we should advise of the Bureau of Prisons about?

13 MR. ELSHAFAY: I do.

14 THE COURT: Oh. Sir, let your attorney speak for
15 you.

16 Mr. Dunn?

17 MR. DUNN: I do, your Honor. I mean, my client
18 does.

19 THE COURT: Will you please make sure that we in-
20 form, I'd like to know what that is so we can inform the NVC of
21 those conditions and prescriptions?

22 MR. DUNN: Well, your Honor, do you want that --

23 THE COURT: Does he have them with him?

24 MR. DUNN: I believe so. Your Honor, I can present
25 to you, if you'd like, his mother handed me these. There are

1 MR. CURRIE: There is, your Honor.

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3 finds that given Mr. Siraj's status that an order of detention
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21 those conditions and prescriptions?

22 MR. DUNN: Well, your Honor, do you want that --

23 THE COURT: Does he have them with him?

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1 three separate prescriptions.

2 THE COURT: There are three prescriptions in the name
3 of Mr. Elshafay. I would ask that we give these to Bureau of ,
4 the Marshal's Service to turn over, please to NVC.

5 MR. CURRIE: We'll give them to the marshals, your
6 Honor, yes.

7 THE COURT: All right. Very well.

8 Is there any other matter that the court needs to ad-
9 dress at this time?

10 MR. CURRIE: Nothing further for the Government,
11 your Honor.

12 MS. CESARE: No, thank you.

13 THE COURT: All right, thank you.

14 MR. CURRIE: Thank you, your Honor.

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CERTIFICATION

4 I, Joseph C. Williams, certify that the foregoing is a correct
5 transcript from the official electronic sound recording of the
6 proceedings in the above-entitled matter.

Joy Wellman
Signature of Approved Transcriber

Signature of Approved Transcriber

10/07/04

Date

Joseph C. Williams

Typed or Written Name